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MT LEGISLATIVE HISTORY

Chapter 540 19 83

Bill H 714 S _____ Original bill & hist? ✓ C

H. Committee on Jud. S. Committee on St. Admin.

Hearing Date(s)	2-15	C	Hearing Date(s)	3-23	C
	_____	C		_____	C
	_____	C		_____	C
	_____	C		_____	C
Date Out	_____	C		_____	C

Rpt 2-15

Did this bill originate in an interim committee? ___Yes ___No

Committee _____ Report _____

HOUSE BILL NO. 714

INTRODUCED BY SPAETH, CHRISTIAENS, FULLER, HALLIGAN, R. MANNING, FARRIS, BACHINI, PECK, DARKO, REAM, J. JENSEN

BY REQUEST OF THE COMMISSION FOR HUMAN RIGHTS

IN THE HOUSE

February 10, 1983	Introduced and referred to Committee on Judiciary.
February 15, 1983	Committee recommend bill do pass as amended. Report adopted.
	Statement of Intent attached.
February 16, 1983	Bill printed and placed on members' desks.
February 18, 1983	Second reading, do pass as amended.
February 21, 1983	Correctly engrossed.
February 22, 1983	Third reading, passed. Transmitted to Senate.

IN THE SENATE

March 1, 1983	Introduced and referred to Committee on State Administration.
March 23, 1983	Rereferred to Committee on Judiciary.
March 25, 1983	Committee recommend bill be concurred in as amended. Report adopted.
March 26, 1983	Second reading, concurred in.

March 28, 1983	Third reading, concurred in. Ayes, 45; Noes, 2.

IN THE HOUSE

March 29, 1983	Returned to House with amendments.
April 1, 1983	Second reading, pass consideration.
April 4, 1983	Second reading, amendments concurred in.
April 5, 1983	Third reading, amendments concurred in.
	Sent to enrolling.
	Reported correctly enrolled.

LC 1230/01

House BILL NO. 714

INTRODUCED BY J. Jensen, Smith, Gladwin, Fuller, Wallin, Richard E. Manning, Carol Farris, Eschenz, Parks, Clark, Reap

BY REQUEST OF THE COMMISSION FOR HUMAN RIGHTS

A BILL FOR AN ACT ENTITLED: "AN ACT TO ESTABLISH PROCEDURES TO BE FOLLOWED BY THE HUMAN RIGHTS COMMISSION IN THE ENFORCEMENT OF THE GOVERNMENTAL CODE OF FAIR PRACTICES AND TO PROVIDE FOR CONSISTENCY OF INTERPRETATION AND ENFORCEMENT OF THE GOVERNMENTAL CODE OF FAIR PRACTICES AND THE HUMAN RIGHTS LAWS; AMENDING SECTIONS 49-3-101 AND 49-3-303, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 49-3-101, MCA, is amended to read:

"49-3-101. Definitions. As used in this chapter, the following definitions apply:

~~(1) "Age" means number of years since birth. It does not mean level of maturity or ability to handle responsibility, which may represent legitimate considerations as reasonable grounds for discrimination without reference to age.~~

~~(2) "Commission" means the commission for human rights provided for in 2-15-1706.~~

~~(3) "Mental handicap" means any mental disability resulting in subaverage intellectual functioning or impaired social competence.~~

~~(4) "Physical handicap" means a physical disability, infirmity, malformation, or disfigurement which is caused by bodily injury, birth defect, or illness, including epilepsy. It includes without limitation any degree of paralysis; amputation; lack of physical coordination; blindness or visual impediment; deafness or hearing impediment; muteness or speech impediment; or physical reliance on a guide dog for the blind, a wheelchair, or any other remedial appliance or device.~~

~~(5)~~ "State ~~and~~ or local governmental agencies agency" means:

(a) ~~all branches, departments, offices, boards, bureaus, commissions, agencies, university units, colleges, and other instrumentalities of state government~~ any branch, department, office, board, bureau, commission, agency, university unit, college, or other instrumentality of state government; ~~and~~ or

(b) ~~counties, cities, towns, school districts, and other units~~ a county, city, town, school district, or other unit of local government and ~~all instrumentalities~~ any instrumentality of local government.

~~(6)~~ "Qualifications" means such qualifications as are genuinely related to competent performance of the particular occupational task."

HB 714

NEW SECTION. Section 2. Rulemaking authority. The commission may adopt rules necessary for the implementation of this chapter, in accordance with the Montana Administrative Procedure Act. The rules may include but are not limited to procedural rules for:

(1) filing of complaints;

(2) conducting investigations of complaints;

(3) petitioning for a declaratory ruling, as provided in [section 4]; and

(4) conduct of hearings.

NEW SECTION. Section 3. Retaliation prohibited. It is an unlawful discriminatory practice for a state or local governmental agency to discharge, expel, blacklist, or otherwise discriminate against an individual because he has opposed any practices forbidden under this chapter or because he has filed a complaint, testified, assisted, or participated in any manner in an investigation or proceeding under this chapter.

NEW SECTION. Section 4. Procedure for claiming exemption. A state or local governmental agency seeking to apply any exemption from the requirements of this chapter may petition the commission for a declaratory ruling as provided in 2-4-501 of the Montana Administrative Procedure Act. If the commission finds that reasonable grounds for applying an exemption exist, it may issue a ruling exempting

the petitioner from the particular provision. The burden is on the petitioner to demonstrate that an exemption should be applied. Any provision in this chapter allowing an exemption from its requirements must be strictly construed.

NEW SECTION. Section 5. Filing complaints. (1) A complaint may be filed with the commission or in district court by or on behalf of any person claiming to be aggrieved by any discriminatory practice prohibited by this chapter.

(2) A complaint under this chapter must be filed with the commission or in district court within 180 days after the alleged unlawful discriminatory practice occurred or was discovered. A complaint not filed within that time may not be considered by the commission or the court.

NEW SECTION. Section 6. Form of complaint. (1) A complaint filed with the commission must be in the form of a written, verified complaint, stating the name and address of the state or local governmental agency alleged to have engaged in the discriminatory practice and the particulars of the alleged discriminatory practice.

(2) The commission staff may file a complaint in like manner when a discriminatory practice comes to its attention.

NEW SECTION. Section 7. Temporary relief by court order. (1) At any time after a complaint is filed with the commission under this chapter alleging an unlawful

discriminatory practice, the commission may file a petition in the district court in the county in which the subject of the complaint occurred or in the county in which a respondent resides or transacts business, seeking appropriate temporary relief against this practice, including an order restraining the respondent from interfering in any manner with an order the commission may enter with respect to the complaint.

(2) The court has the power to grant the temporary relief or restraining order it considers just and proper. However, no relief or order extending beyond 14 days may be granted except by consent of the respondent or upon a finding by the court that there is reasonable cause to believe that the respondent has engaged in discriminatory practices.

NEW SECTION. Section 8. Informal settlement. The commission staff shall promptly and impartially investigate the matters set out in a complaint filed with the commission. If the staff determines that the allegations are supported by substantial evidence, it shall immediately try to eliminate the discriminatory practice by informal conference, conciliation, and persuasion.

NEW SECTION. Section 9. Contested case hearing before commission. (1) If the informal efforts to eliminate the discrimination alleged in a complaint filed with the

commission are unsuccessful, the staff shall inform the commission of the failure and the commission shall serve written notice, together with a copy of the complaint, requiring the state or local governmental agency charged in the complaint to answer the allegations of the complaint at a hearing before the commission.

(2) The commission hearing must be held in the county where the unlawful conduct is alleged to have occurred unless the state or local governmental agency charged in the complaint or the commission requests a change of venue for good cause shown. The case in support of the complaint may be presented before the commission by the commission staff, the complainant, or an attorney representing the complainant. The hearing and any subsequent proceedings under this chapter must be held in accordance with the Montana Administrative Procedure Act, except as provided in [section 12] and 49-3-303.

(3) The commission may make provisions for defraying the expenses of an indigent party in a contested case hearing held pursuant to this chapter.

(4) The prevailing party in a hearing under this section may bring an action in district court for attorney fees. The court in its discretion may award the prevailing party reasonable attorney fees. Such action must comply with the Montana Rules of Civil Procedure.

NEW SECTION. Section 10. Procedure upon a finding of discrimination by commission. (1) If the commission finds that a state or local governmental agency against which a complaint was filed has engaged in the discriminatory practice alleged in the complaint, the commission shall order it to refrain from engaging in the discriminatory practice. The order may:

(a) prescribe conditions for the governmental agency's future conduct relevant to the type of discriminatory practice found;

(b) require any reasonable measure to correct the discriminatory practice and to rectify any harm, pecuniary or otherwise, to the person discriminated against; and

(c) require a report on the manner of compliance.

(2) The order may not require the payment of punitive damages.

(3) If a commission order or conciliation agreement requires inspection by the commission staff for a period of time to determine if the respondent is complying with the order or agreement, the period of time may not exceed 3 years.

NEW SECTION. Section 11. Procedure upon failure by commission to find discrimination. If the commission finds that a state or local governmental agency against which a complaint was filed has not engaged in the discriminatory

practice alleged in the complaint, it shall issue and serve on the complainant an order dismissing the complaint.

NEW SECTION. Section 12. Injunction to enforce commission order. If the commission's order is not obeyed, the commission staff shall petition the district court in the county where the discriminatory practice occurred or in which the respondent resides or transacts business to enforce the commission's order by injunction.

Section 13. Section 49-3-303, MCA, is amended to read:

"49-3-303. ~~Remedies for individuals~~ Action in district court. (1) ~~Any~~ A person ~~claiming to be aggrieved by a violation of any provision of this chapter may file~~ filing a complaint ~~for redress of the violation~~ with the commission ~~for human rights and~~ pursuant to [section 5] may, upon exhaustion of administrative remedies, may petition the district court in the district where the alleged violation occurred or where the complainant resides ~~or where the alleged violation occurred~~ for appropriate relief. The court may grant such relief, by injunction or otherwise, as it considers appropriate and may in its discretion award the prevailing party reasonable attorney fees.

(2) The complainant may pursue a complaint in district court without filing a complaint ~~before~~ with the ~~human rights~~ commission but may not then pursue the complaint ~~before~~ with the commission.

(3) Actions under this section are original actions."

NEW SECTION. Section 14. Codification instruction. Sections 2 through 12 are intended to be codified as an integral part of Title 49, chapter 3, and the provisions of Title 49, chapter 3, apply to sections 2 through 12.

NEW SECTION. Section 15. Effective date. This act is effective on passage and approval.

-End-

STATE OF MONTANA

REQUEST NO. 399-83

FISCAL NOTE

Form BD-15

In compliance with a written request received February 14, , 19 83 , there is hereby submitted a Fiscal Note for House Bill 714 pursuant to Title 5, Chapter 4, Part 2 of the Montana Code Annotated (MCA).

Background information used in developing this Fiscal Note is available from the Office of Budget and Program Planning, to members of the Legislature upon request.

DESCRIPTION OF PROPOSED LEGISLATION:

House Bill 714 establishes procedures to be followed by the Human Rights Commission in the enforcement of the governmental code of fair practices and provides for consistency of interpretation and enforcement of the governmental code of fair practices and the human rights laws.

ASSUMPTIONS:

1) The Human Rights Commission presently has enforcement authority for Chapter 3 of Title 49, MCA.
2) Bill establishes procedures for enforcement when a complaint is filed.
3) Bill does not expand the authority of the commissioner.

FISCAL IMPACT:

None anticipated.

FISCAL NOTE 13:EE/1

David M. Lewis

BUDGET DIRECTOR

Office of Budget and Program Planning

Date: 2-17-83

REPRESENTATIVE BRAND indicated that 1 per cent of those fees are minute. MR. NACHTSHEIM advised that the per cent can be anything that the legislature decides.

REPRESENTATIVE ADDY commented that the fees should be kept as low as possible to maintain good access to the courts and he asked if there was any other good funding source. MR. BROWN replied that there has not been comparisons made as far as what they are doing in other states.

REPRESENTATIVE DAILY asked how many judges retired at the beginning of this year. MR. NACHTSHEIM responded that nine judges retired - seven on the judges' retirement and two on PERS.

REPRESENTATIVE DAILY asked if they have to work fifteen years as a judge to retire at half salary. MR. NACHTSHEIM replied, "Yes."

REPRESENTATIVE DAILY asked if they could retire and still practice law and MR. NACHTSCHEIM replied that they could.

There were no further questions on this bill and the hearing was closed.

The members of the committee returned to room 224A.

HOUSE BILL 714

REPRESENTATIVE SPAETH, District 71, Silesia, said that this bill was introduced at the request of the Commission for Human Rights; the legislature passed the Montana Human Rights Act and also passed the Governmental Code of Fair Practices Act, which are essentially two separate acts; the legislature implented the enforcement provisions of the Human Rights Act without taking like action for the Governmental Code of Fair Practices Act; and he said this bill adopts the same, almost identical provisions in the Governmental Code of Fair Practices Act as they adopted in the Human Rights Act.

ANNE MacINTYRE, Staff Attorney for the Human Rights Commission, gave testimony in support of this bill, and explained the provisions of this bill.

There were no further proponents and no opponents.

REPRESENTATIVE SPAETH closed.

REPRESENTATIVE RAMIREZ noted on page 8 that there is a provision which states, "award the prevailing party reasonable attorney fees" and he asked if this was true now with the Human Rights Act. MS. MacINTYRE replied that it is; this particular provision on lines 20 and 21 was added at the suggestion of the bill drafter in the Legislative Council because he thought there should be some consistency.

REPRESENTATIVE RAMIREZ asked if this is the identical provision that is contained in the Human Rights Act. MS. MacINTYRE replied that it is not the identical provision - the identical provision is set forth in section 9, page 6, lines 21 to 25 of this bill. She added that currently there is no authority for a charging party to bring a complaint directly into district court, so there is no need for an exact identical provision in the Human Rights Act.

REPRESENTATIVE CURTISS noted on page 8, lines 14 through 17, it states, "may petition the district court in the district where the alleged violations occurred or where the complainant resides for appropriate relief" and she asked if this means that the Human Rights Commission doesn't have to make a determination one way or the other; if no determination is made by the commission, they can still go ahead and petition in district court. MS. MacINTYRE answered that she does not believe so; she believes that in order to exhaust administrative remedies, the party would have to carry the case through to a final determination by the commission.

REPRESENTATIVE ADDY asked why they don't merge these chapters into one. MS. MacINTYRE replied that the Human Rights Act prevents discrimination in employment, public accommodations, housing, financing, education and governmental services; the Code of Fair Practices prohibits discrimination in employment by governmental entities and all the prohibitions in the Human Rights Act, but they apply only to governmental entities; it speaks of employment, employment referrals and placement services, educational counseling and training programs, licensing, governmental services, distribution of government funds and public contracts. She indicated that there is some overlap, but in some areas there are no comparable provisions in the Human Rights Act.

REPRESENTATIVE RAMIREZ commented that he was still confused over this provision on page 8, and he cannot find any comparable provision in the Human Rights Act. MS. MacINTYRE replied not exactly - the only provision that might be considered as comparable is 49-2-505, subsection 4.

REPRESENTATIVE RAMIREZ noted that that says the prevailing party may bring action in district court for attorney's fees and that is what you have in the new section 9 on page 6, so they would be creating a difference if they adopt this language on lines 20 and 21, page 8 between the Human Rights Act and this act. MS. MacINTYRE responded that that was correct; the problem is that they are already different in that the charging party can elect to go directly into district court without filing with the commission under the Code of Fair Practices; so she believes that the purpose of that language was to address that situation.

REPRESENTATIVE RAMIREZ asked why is that difference being made. MS. MacINTYRE answered that that is what the legislature adopted in the last session.

REPRESENTATIVE RAMIREZ asked why is that difference in the Human Rights Act and this new act being made. MS.

MacINTYRE said that the suggestion the bill drafter made to her was that if a prevailing party in a commission proceeding could obtain attorney's fees if an action is brought in district court rather than with the commission, that the prevailing party of that action should similarly be entitled to attorney's fees.

REPRESENTATIVE RAMIREZ asked why the distinction is being made between the two acts in permitting the person under the Fair Practices Act to go directly to district court whereas under the Human Rights Act, they can't go to court. MS. MacINTYRE answered that she did not know - that is the existing statutory provision.

There were no further questions and the hearing on this bill was closed.

EXECUTIVE SESSION

HOUSE BILL 714

REPRESENTATIVE SPAETH moved that this bill DO PASS. The motion was seconded by REPRESENTATIVE DARKO.

VICE-CHAIRMAN ADDY presented to the committee a Statement of Intent on this bill. See EXHIBIT C.

REPRESENTATIVE RAMIREZ commented that he was really confused as to why there was a difference in the two acts; it didn't look to him as though the Fair Practices Act presently provides for the filing of a complaint directly in district court; that is a new section which says, "may be filed with the commission or in district court"; he felt he did not have an adequate explanation as to why they are treating the two things differently.

REPRESENTATIVE JAN BROWN indicated that they addressed that in House Bill 660.

VICE-CHAIRMAN ADDY mentioned that he thought this bill was coming up on the floor today. He said that he saw a common drift in both of these pieces of legislation.

REPRESENTATIVE RAMIREZ stated that if everyone can go to district court directly, why have the Human Rights Commission - why not just put it in the district court; why waste all the time of a separate proceeding, etc. if

you are going to give the alternative; if they have this bill which says you can go either place; you can get your attorney's fees either place; if this is being presented on the basis that that is what they do in the Human Rights Act; then we find the Human Rights Act is being amended to do this; and they are actually making a fairly substantial change in the law, permitting now, under both acts, if they pass this bill and HB 660, they are making a very fundamental change - that now you can by-pass the Human Rights Commission. He indicated that that was an important and significant change and it could have a very profound effect on both the Human Rights Commission and on processing these claims; a lot of people may not want to go to the Human Rights Commission, but, if that is the case, why have it.

VICE-CHAIRMAN ADDY pointed out that under 49-3-303, presently under the Code of Fair Practices, you can elect to proceed directly into court or through the commission; and at this point, he is a little confused about the need for section 5.

REPRESENTATIVE SPAETH said that he does not know if section 1 or section 5 has any reason to be in there; but in subsection 2 of section 5, this essentially establishes the 180 days statute of limitations and he felt that was the important part of section 5.

REPRESENTATIVE JENSEN asked on page 1, line 24, wherein it defines mental handicap and he wondered if this was a sufficiently narrow definition.

REPRESENTATIVE RAMIREZ said that he had the same reaction and then he looked and that was the same definition under the Human Rights Act.

REPRESENTATIVE EUDAILY stated that he was looking at HB 660 and at section 5 in this bill; section 5 only contains one of the things that is considered in HB 660; and he asked if HB 660 goes in, do all those conditions go under section 5 here or what happens to them.

VICE-CHAIRMAN ADDY replied that he thought in HB 660, they are talking about a Human Rights Act complaint and in section 5, they are talking about a Code of Fair Practices complaint.

REPRESENTATIVE KEYSER said that he had a problem on page 4, line 20 in subsection 2; he has a big problem with state agencies on their own who can start initiating all kinds of things without any complaint from the public; they are in the business to do this; and he can really see them propagating to keep themselves in office; he has no complaint if there is a human rights challenge by an individual and he says that his rights have been violated, that is fine; but this doesn't say that; this says that the commission's staff may file a complaint in like manner when a discriminatory practice comes to his attention; and he thought that was pretty broad. He continued that if a person wants to come into the commission, that is fine; they should have every right to do that, but when the staff itself can start doing this, on its own, he has real problems with that. He moved to amend this bill by striking lines 20, 21 and 22 on page 4.

REPRESENTATIVE FARRIS advised that there could be a situation where there was a mental handicap or a group that is discriminated against and knows that retaliation will happen to them and, therefore, they are not capable of making a complaint; or someone who is not in a position to be smart enough or safe enough to make a complaint needs someone who has the option; and she contended that this was all it is is an option. She felt they have to have somebody who can climb on the white horse and go riding off; and it doesn't say they have to; it says they may.

REPRESENTATIVE KEYSER replied that he has a real problem with that; if that person's problem is being brought to the attention of somebody, then somebody can file a complaint - an individual can file a complaint - how are they going to know if somebody doesn't come forward and say, "Look, you have a problem." He contended that that

person may be mentally handicapped or what; apparently that person has got to go and make it known; how do they make it known; if they can make it known, they surely can go and file a complaint; because it isn't that hard under the procedure to file a complaint against somebody; and why the staff should have that total authority really bothers him. He emphasized that this was set up for the individual that is being discriminated against; they start giving staff and these departments the right to do things like this on their own, he has some real problems with that.

REPRESENTATIVE SPAETH commented that they are getting into a lot of things that they do not like about the Human Rights Act; this provision is essentially a directive from the Human Rights Act; what they are trying to do here is not argue the Human Rights Act, but essentially argue whether this provision should be enforced and have the same kind of provisions attached to it as the Human Rights Act; that provision is presently found in 49-2-501; in the first paragraph, the commission does have that right right now in the Human Rights Act; he may agree with Representative Keyser that he has questions about that being in the Human Rights Act; but he does not think they are granting any new or unusual authority here under this particular commission; so he did not think it was that new of a provision here; and he thought maybe it should be looked at in the Human Rights Act.

VICE-CHAIRMAN ADDY asked if they had a second on the motion. REPRESENTATIVE HANNAH seconded the motion.

REPRESENTATIVE KEYSER thought that because the language is another act and because maybe it is bad there; and they are talking about brand new language here that is not necessarily a reason to adopt language that is bad. He said that if they don't put it in here; they could go back to the Human Rights Act and make an amendment to that act to strike that from there; then they would have corrected the problem, but he felt that anytime they find something that they feel

is bad, just because it is in another section it doesn't make it right; and he thought that all sections that are bad should be taken out.

REPRESENTATIVE SPAETH commented that he does not have a problem as far as paragraph 2 is concerned, and he will support Representative Keyser's motion, but he felt that he did not want to get too far afield in the other provisions of the act that are similar, because when you have done it in one place and you are trying to force a like act in another place, you should try to keep the same kind of track record.

REPRESENTATIVE JENSEN indicated that he would support the amendment because they are talking about the Governmental Code of Fair Practices and he thought that they have to make some assumptions about people employed by the government; they are talking about those people who might have a need to take action on their own under the Human Rights Act, but as far as the Code of Fair Practices he doesn't think they are dealing with people who can't act responsibly on their own.

The motion carried with REPRESENTATIVE FARRIS and REPRESENTATIVE RAMIREZ voting no.

REPRESENTATIVE RAMIREZ moved to amend this bill on page 4, line 5 by striking subsection 1 and eliminating "(2)" and revising the paragraph that starts on line 9 by saying, "Complaint under this chapter must be filed with the commission within 180 days" and then strike on line 13 "or the court"; then over on page 8, strike all of lines 22 through 25 and on line 1, page 9, then insert basically the provisions of HB 660.

He said that they would just strike section 49-3-303 and substitute in its place the same requirements in HB 660, which basically say that you have to start with your complaint with the Human Rights Commission, but under certain circumstances, the Human Rights Commission can let you go directly to district court; those circumstances may be any number of them, but some of them have to do with an area in which the Human Rights Commission is processing them very quickly, where maybe they run into an impasse that they just can't resolve,

so they issue a letter saying you go ahead and go on to district court. He continued that he just cannot see any real good reason why they should permit people to by-pass the Human Rights Commission automatically in one and not the other; and the title of this act is to make these two procedure consistent, so it would seem to him that they should make them consistent by requiring everybody go to the Human Rights Commission first.

REPRESENTATIVE SPAETH stated that he agreed; he thinks that is a good amendment; the only trouble is if HB 660 fails to pass and this one does pass, then they have another conflict; but he felt that this was the best way to go.

REPRESENTATIVE RAMIREZ said that if HB 660 doesn't pass, he would try to amend HB 714 to still be consistent with whatever the Human Rights Act is.

The motion carried with REPRESENTATIVE JENSEN and REPRESENTATIVE FARRIS voting no.

REPRESENTATIVE BERGENE asked MS. MacINTYRE if she had anything to say about this. She responded that she thought it was a good amendment and she felt that the same procedure should be followed either in the Human Rights Act or the Code of Fair Practices and she thought Representative Ramirez's idea was a good one. She said the reason they did not propose to do the same thing, they felt they would be unduly criticized to try and change what the legislature did in the last session.

REPRESENTATIVE FARRIS indicated that she felt this was very significant and she thought she would like to have more time to think about it; and she made a motion that they pass action for the day.

REPRESENTATIVE ADDY said that they have four bills scheduled for Friday right now; they may be meeting on

Saturday; the Speaker has asked them to keep their hearing calendar clear for Monday, Tuesday and Wednesday of next week so their time was limited.

REPRESENTATIVE RAMIREZ advised that the problem they have is not so much in the committee but, for those who have not been here before, the next few days are going to be horrible and the more of these things that they put off in the last few days may not even make it across; they had 138 bills brought up yesterday from the Legislative Council and he understands that 100 of them were filed in the House; and if you just take 100 bills at the rate they have been going, that is five days worth of work; and he felt that they were going to have such a jam in the next few days that these bills are not going to be considered very well.

The motion failed with REPRESENTATIVE FARRIS and REPRESENTATIVE DAILY voting no.

REPRESENTATIVE EUDAILY moved that the bill DO PASS AS AMENDED. REPRESENTATIVE SPAETH seconded the motion.

REPRESENTATIVE CURTISS indicated she had a question about rulemaking authority and wondered if this was consistent with all other language.

REPRESENTATIVE ADDY asked if the Human Rights Act has rulemaking authority. MS. MacINTYRE responded that they do and it is contained in 49-2-204 and it is very broad.

The motion passed unanimously.

STATEMENT OF INTENT ON HOUSE BILL 714

REPRESENTATIVE JENSEN moved that this DO PASS. The motion was seconded by REPRESENTATIVE EUDAILY.

The motion passed unanimously.

HOUSE BILL 705

REPRESENTATIVE DAILY moved that this bill DO PASS. The motion was seconded by REPRESENTATIVE JENSEN.

STANDING COMMITTEE REPORT (1 of 2)

February 15, 19 83

MR. SPEAKER

We, your committee on HOUSE JUDICIARY

having had under consideration HOUSE Bill No. 714

First reading copy (white)
Color

A BILL FOR AN ACT ENTITLED "AN ACT TO ESTABLISH PROCEDURES TO BE FOLLOWED BY THE HUMAN RIGHTS COMMISSION IN THE ENFORCEMENT OF THE GOVERNMENTAL CODE OF FAIR PRACTICES AND TO PROVIDE FOR CONSISTENCY OF INTERPRETATION AND ENFORCEMENT OF THE GOVERNMENTAL CODE OF FAIR PRACTICES AND THE HUMAN RIGHTS LAWS; AMENDING SECTIONS 49-3-101 AND 49-3-303, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

Respectfully report as follows: That HOUSE Bill No. 714

BE AMENDED AS FOLLOWS:

1. Title, line 10.
Strike: "SECTIONS"
Insert: "SECTION"
Strike: "AND 49-3-303"
2. Page 4, line 5.
Following: "complaints."
Strike: Subsection (1) in its entirety through "(2)" on line 7.
3. Page 4, line 10.
Following: "commission"
Strike: "or in district court"
4. Page 4, line 11.
Following: "commission"
Strike: "or the court"
5. Page 4, line 14.
Following: "complaint."
Strike: "(1)"
6. Page 4, line 19.
Strike: Subsection (2) in its entirety.

DO PASS AS AMENDED

Chairman.

STATE PUB. CO.
Helena, Mont.

February 15 19 83

Page 7, line 9.
Strike: Section 13 in its entirety.
Insert: Section 13. Filing a complaint in district court. (1) The commission staff shall, at the request of the complainant, issue a letter entitling the complainant to file a discrimination action in district court if:

(a) the commission has not yet held a contested case hearing pursuant to [Section 9] and

(b) one of the following has occurred:

(i) 180 days have elapsed since the date the complaint was filed under [Section 5] or

(ii) the commission staff determines that its efforts to informally investigate and settle the complaint pursuant to [Section 9] are unsuccessful.

(2) Within 90 days after receipt of a letter issued by the commission pursuant to subsection (1), a complainant may petition the district court in the district in which the alleged violation occurred for appropriate relief.

(3) If the district court finds, in an action under this section, that a person, institution, entity, or agency against whom or which a complaint was filed has engaged in the unlawful discriminatory practice alleged in the complaint, the court may provide the same relief as described in [Section 12] for a commission order. In addition, the court may in its discretion allow the prevailing party reasonable attorney fees.

Page 9, line 3
Following: "through"
Strike: 12
Insert: "13"

Page 9, line 5.
Following: "through"
Strike: "12"
Insert: "13"

AND AS AMENDED

DO PASS

Chairman.

STATE PUB. CO.
Helena, Mont.

February 15, 19 83

MR. SPEAKER:

WE, YOUR COMMITTEE ON JUDICIARY, HAVING HAD UNDER CONSIDERATION HOUSE BILL NO. 714, FIRST READING COPY (WHITE), ATTACH THE FOLLOWING STATEMENT OF INTENT:

STATEMENT OF INTENT
House Bill No. 714 (LC 1230)

A statement of intent is required for this bill because it grants rulemaking authority to the Human Rights Commission in section 2.

The intent of this bill is to eliminate a confusion which now exists between the Human Rights Act and the Governmental Code of Fair Practices by establishing general consistency in the enforcement of these two chapters by the Human Rights Commission. Therefore, it is the intent of the Legislature that the rules adopted by the Commission under the Governmental Code of Fair Practices be modeled after and be as consistent as practicable with the rules adopted by the Commission under the Human Rights Act.

DO PASS.

KELLY ADDY, Vice- Chairman.

STATE PUB. CO.
Helena, Mont.

48th LEGISLATIVE SESSION

COMMITTEE ON STATE ADMINISTRATION

Pg 5 BILL NO.	ENTERED COMM.	DATE CONSIDERED	OUT OF COMM.	DO PASS DATE	DO NOT PASS DATE	DO PASS AS AMEND. DATE	BE CONCURRED IN DATE	BE CONC. IN AS AMENDED DATE	BE NOT CONCURRED IN DATE
HB 557	2/12/83	3/2						3/2	
HB 559	2/12	3/3					3/3		
HB 579	2/17	3/4					3/4		
HB 580	3/2	3/22 (TABLED)							
HB 625	3/2	3/23						3/23	
HB 626	3/2	3/9					3/11		
HB 627	3/2	3/10						3/10	
HB 639	3/1	3/16					3/16		
HB 674	2/21	3/14					3/14		
HB 688	2/21	3/14					3/14		
HB 689	3/1	3/22						3/24	
HB 691	3/1	3/8						3/11	
HB 693	2/17	3/10					3/10		
HB 712	2/21	3/15					3/15		
HB 714	3/1	3/23	3/24					3/23	
HB 721	3/2	3/9						3/11	

Use a separate sheet for Senate, House Bills, and Resolutions.

MINUTES OF THE MEETING
STATE ADMINISTRATION COMMITTEE
MONTANA STATE SENATE

March 23, 1983

The fifty-third meeting of the Senate State Administration Committee was called to order by Senator Pete Story on March 23, 1983 at 1:00 p.m. in room 331 of the State Capitol Building in Helena, Montana.

ROLL CALL: All members were present.

The meeting was called to hear House Bills 714, 625 and HJR 30.

CONSIDERATION OF HOUSE BILL 714:
"AN ACT TO ESTABLISH PROCEDURES TO BE FOLLOWED BY THE HUMAN RIGHTS COMMISSION IN THE ENFORCEMENT OF THE GOVERNMENTAL CODE OF FAIR PRACTICES AND TO PROVIDE FOR CONSISTENCY OF INTERPRETATION AND ENFORCEMENT OF THE GOVERNMENTAL CODE OF FAIR PRACTICES AND THE HUMAN RIGHTS LAWS; AMENDING ..."

REPRESENTATIVE GARY SPAETH, District 71, introduced the bill as it's sponsor and turned it over to the Human Rights staff.

PROPONENTS:

ANN MAC INTYRE, staff attorney for the Human Rights Commission, stated that she was here at the request of the commission and that H.B.714 is very important to the commission. Without legislation such as this the commission is the primary inforcement agency for complaints under governmental code of fair practices, Chapter 3, title 49 of the Montana Codes, without any legislative guidance as to procedure to be followed and the commission if vulnerable to a claim that they have no authority to act upon. Chapter 3, title 49, does not provide that the commission may hold a hearing or what remedies are avaiable and in addition at least one state district court has held that because chapter 3 does not does not contain a statute of limitations, the statutes of limitations applicable to such complaints is two years as provided in section 27-2-211 of the Montana Codes. By contrast the statutes of limitations under the Montana Human Rights act which is the other primary action, is 180 days. This fact present a very real possibility that cases may be filed under chapter 3 which would not alledge a violation of chapter 2 and for which the commission has no authority to hold a contested case. It seems unreasonable.

In order to provide for a consistency in the process of all cases filed with the Human Rights Commission and process by the general public the commission believes that the same procedure should apply to all cases filed with the commission.

She said that the rule making is in Section 2 of the bill. The language comes from House Bill 660 and she presented copes of the reference bill as it left the House and the proposed amendments as shown in EXHIBIT 1 and EXHIBIT 2.

FREDERICK SHERWOOD, attorney in Helena, Montana, stated he was here at the invitation of Senator Story some time ago though he probably does not remember but he had made mention of the descrepency between codes 2 and 3 at which time he was asked to come in about it at a later date.

OPPONENTS: None

QUESTIONS OF THE COMMITTEE:

SENATOR STORY asked if there were a time limit and how does it work in regards to a letter allowing a person to go into district court himself.

MS. MAC INTYRE said that presently there is no time limit.

SENATOR TOWE asked the difference between 6-60 and section 13.

MS. MAC INTYRE said that is the portion of 6-60 that was amended in the Senate so amendment No. 2 in the proposed amendments inters the same language in Section 13.

SENATOR TOWE asked if 12 months is a reasonable time limit.

MS. MAC INTYRE said yes. She stated that the average processing time to process a complaint is about 1 year. This should not add to their work load.

SENATOR TOWE asked if they expect some of those complaints will be filed now and Ms. MacIntyre said "yes", presently they have three cases pending before it.

SENATOR TOWE asked if there is any reason why they need a verified complaint and Ms. MacIntyre said the Human Acts Rights provide for this.

SENATOR MARBUT asked if we have to go through the time element for the individual for a person to file a complaint. Ms. MacIntyre said "no".

SENATOR MARBUT asked if the commission is not sypmathetic can the individual go to court himself. Ms. MacINtyre said they could not.

SENATOR STORY asked why we are doing that.

MS. MAC INTYRE said that under Chapter 2 the party could only go to the commission and under Chapter 3, pursuant to the amendment placed there in the last session, the party could allege to go through the commission or through the court but not both. It was the decision that it would be better to be entirely consistent with Chapter 2 and Chapter 3 and eliminate the right of the individual to go right to court.

SENATOR TOWE said that the concept is to go through the agencies and not directly to court so they would not clog up the courts.

SENATOR STORY stated that that is the concept but you do have a backlog of about 250 cases and even though the budget has increased the backlog is presistent and by not permitting a person to go directly to court you are stuck with this backlog.

MS MAC INTYRE said that theory was to provide an option for the party to go to court if the matter was not going to be resolved by the commission.

SENATOR STORY said now they will have to all go through you. He said that he agrees that they shouldn't do both but disagree that they shouldn't have a choice of one or the other.

MS. MAC INTYRE said that the commission staff has a very high success rate in resolving these cases.

SENATOR MARBUT questioned the language in Section 5, part 1 and asked what are they talking about. Ann MacIntyre said that is what was struck in the House.

SENATOR MARBUT asked about the definition of "agency" and it was answered that it was made by legal staff in bill drafting.

SENATOR STIMATZ asked why they have a backlog and Ms. MacIntyre said that it was built up in the early years of the Commission.

SENATOR STIMATZ asked why they could not get cases out. It was answered that they have come down considerably.

REPRESENTATIVE SPAETH CLOSED and asked for concurrence of this bill.

The hearing closed on House Bill 714.

CONSIDERATION OF HOUSE BILL 625:
"THE PERCENT-FOR-ART ACT; PROVIDING THAT AN AMOUNT NOT TO EXCEED UP TO 1 PERCENT OF STATE APPROPRIATIONS FOR BUILDING OR RENOVATING APPROPRIATE STATE BUILDINGS MAY BE USED FOR THE ACQUISITION OF VISUAL WORKS OF ART FOR SUCH BUILDINGS; AND PROVIDING AN EFFECTIVE DATE."

ACTION ON HOUSE BILL 424:
The statement of intent to H.B.424 was MOVED by SENATOR TOWE. Shown as EXHIBIT 8. It will be presented as a Committe of the Whole Amendment.
MOTION PASSED.

ACTION ON HOUSE BILL 846:
SENATOR TOWE MOVED THAT H.B.846 BE CONCURRED IN AS AMENDED.
MOTION PASSED. Senator Marbut will carry this bill.

ACTION ON HOUSE BILL 625:
SENATOR TOWE MOVED AN AMENDMENT that the Montana Arts Council may suggest a recommendation even though the architect does not considerthe proposed building as warranting it.
MOTION PASSED.
SENATOR TOWE MOVED THE AMENDMENT to correct grammar on page 1, line 6. (not to exceed-up-to 1%)
MOTION PASSED.
SENATOR TOWE MOVED THE AMENDMENT page 3, line 4, to insert "new" following "for".
MOTION PASSED
SENATOR TOWE MOVED H.B.625 BE CONCURRED IN AS AMENDED.
MOTION PASSED. Senator Regan will carry this bill.

ACTION ON HOUSE BILL 714:
SENATOR TOWE MOVED THE AMENDMENTS, EXHIBIT 9.
MOTION PASSED.
SENATOR MANNING MOVED H.B.714 AS AMENDED.
SENATOR TOWE moved page 3, lines 7 and 8, strike "but are not limited to".
MOTION PASSED.
SENATOR MANNING MOVED THAT H.B.714 BE CONCURRED IN AS AMENDED.
MOTION PASSED.

ACTION ON HOUSE BILL 107:
It was the decision of the committee to table this bill.
SENATOR TOWE MOVED THAT H.B.107 BE TABLED.
MOTION PASSED.

ACTION ON HOUSE BILL 521:
Dave Cogley, legal council reviewed the proposed amendments.
SENATOR TOWE MOVED THE AMENDMENTS.
MOTION PASSED. Senator Stimatz voted "no".
SENATOR TOWE MOVED H.B.107 BE CONCURRED IN AS AMENDED.
Roll Call Vote, EXHIBIT 10. Five voting "yes"; three "no".
MOTION PASSED. Senator Towe will carry this bill.

EXHIBIT 2
State Administrati
March 23, 1983

Amendments to H.B. 714, Third reading copy

1. Page 9, lines 7-8
   Following: "request of" (line 7)
   Strike: "the complainant," (lines 7 and 8)
   Insert: "either party,"

2. Page 9, line 11
   Following: "[section 9]"
   Strike: remainder of lines 11-17 in their entirety
   Insert: "and has determined that it will be unable to hold a contested case hearing within 12 months of the date the complaint was filed under [section 5]; and
   (b) 180 days have elapsed since the complaint was filed and the efforts of the commission staff to settle the comolaint after informal investigation pursuant to [section 8] are unsuccessful."

3. Page 9, line 19
   Following: "subsection (1),"
   Strike: "a"
   Insert: "the"
   Following: "complainant"
   Strike: "may"
   Insert: "shall"

4. Page 9, line 21
   Following: "appropriate relief."
   Insert: "If the claimant fails to petition the district court within 90 days after receipt of a letter issued by the commission, the complaint shall be barred."

EXHIBIT 9
State Administratic
March 23, 1983

Amendments to H.B. 714, third reading copy

1. Page 9, lines 7 and 8
   Following: "request of"
   Strike: "the complainant"
   Insert: "either party"

2. Page 9, line 11
   Following: "[section 9]
   Strike: remainder of lines 11-17 in their entirety
   Insert: "and has determined that it will be unable to hold a contested case hearing within 12 months of the date the complaint was filed under [section 5]; and
   (b) 180 days have elapsed since the complaint was filed and the efforts of the commission staff to settle the complaint after informal investigation pursuant to [section 8] are unsuccessful."

3. Page 9, line 19
   Following: "subsection (1),"
   Strike: "a"
   Insert: "the"
   Following: "complainant"
   Strike: "may"
   Insert: "shall"

4. Page 9, line 21
   Following: "appropriate relief.
   Insert: "If the claimant fails to petition the district court within 90 days after receipt of a letter issued by the commission, the complaint shall be barred."